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Local Boundary Commission

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Initial Draft

BYLAWS

ALASKA LOCAL BOUNDARY COMMISSION

ARTICLE I - NAME AND AUTHORITY

Section 1. Name. The official name of this body is the Alaska Local Boundary Commission. Common usage and abbreviations are “Commission” and “LBC.” (Eff. 5/19/89)

Section 2. Constitutional Authority. The Commission is mandated by the Constitution of the State of Alaska, article X, section 12, which provides:

A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

(Eff. __/__/__)

Section 3. Statutory Authority. Statutory provisions establishing the Commission in the executive branch are contained in AS 44.33.810 and AS 39.05.060. Statutory provisions regarding the Commission’s authority and duties are set out in AS 44.33.812 - 44.33.828. Statutory provisions dealing with the types of boundary changes that come before the Commission are set out in AS 29.04, AS 29.05, and AS 29.06. (Eff. __/__/__)

Section 4. Standards and Procedures. As mandated by AS 44.33.812(a) the Commission has adopted standards and procedures that govern actions that come before it. Those standards and procedures are set out in regulations adopted in 3 AAC 110.010 - 3 AAC 110.990. The Commission's adoption of regulations is subject to the requirements of the Administrative Procedure Act at AS 44.62.020 - 44.62.300. (Eff. __/__/__)

Section 5. Federal Oversight. In addition to the Constitution, statutes, and regulations, Commission decisions on municipal boundary actions are subject to the federal Voting Rights Act, 42 U.S.C. Section 1973; 28 C.F.R. Part 51. The Voting Rights Act requires demonstration to federal authorities that municipal boundary changes do not have a racially discriminatory purpose or will not make racial or language minority voters worse off than they were prior to the boundary change. The Commission's regulations at 3 AAC 110.630(a) require proof of compliance with the federal Voting Rights Act before a boundary change takes effect.

The federal Voting Rights Act includes minority-language-assistance provisions. Under those provisions, the covered jurisdictions are required to provide language assistance to groups covered by the Act. The requirement to provide minority-language assistance applies to ballots (polling place, sample and absentee), voter-registration forms and instructions, candidate-qualifying forms and instructions, polling-place notices, instructional forms, voter-information pamphlets, and oral assistance throughout the electoral process. (28 C.F.R. 55.19).

Language-minority groups covered by the federal Voting Rights Act are limited to American Indians, Asian Americans, Alaska Natives, and Spanish-heritage citizens - the groups that Congress found to have faced barriers in the political process. Language-minority groups covered by the federal Voting Rights Act are determined by the U.S. Census Bureau after each census based upon a formula set out in the Voting Rights Act. (Eff. __/__/__)

ARTICLE II - MISSION AND OBJECTIVES

Section 1. The Constitution of the State of Alaska recognizes that the establishment and revision of boundaries of cities and boroughs are primarily the responsibilities of the State. Shortly after statehood, the Alaska Supreme Court articulated the considerations which led to the creation of the Commission.

An examination of the relevant minutes of [a series of more than 45 meetings held by the Committee on Local Government at the Constitutional Convention] shows clearly the concept that was in mind when the local boundary commission section was being considered: that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. The advantage of the method proposed, in the words of the committee -- "lies in placing the process at a level where area-wide or statewide needs can be taken into account. By placing authority in this third-party, arguments for and against boundary change can be analyzed objectively."

Fairview Public Utility District No. 1 v. City of Anchorage, 368 P.2d 540, 543 (Alaska 1962). (Eff. 5/19/89; am __/__/__)

Section 2. The courts have consistently recognized that the Commission enjoys considerable discretion and broad authority in the exercise of its powers and duties. In this regard, the Alaska Supreme Court has stated:

As we have emphasized on previous occasions, “the Local Boundary Commission has been given a broad power to decide in the unique circumstances presented by each petition whether borough government is appropriate.” *Mobil Oil*, 518 P.2d at 98-99.¹ We have similarly emphasized that “[t]he standards for incorporation set out in AS [29.05.031] were intended to be flexibly applied to a wide range of regional conditions.” *Id.* at 98.

Yakutat v. Local Boundary Com’n, 900 P.2d 721, 728 (Alaska 1995).

In a similar vein, the Court has stated:

We find the selection of annexation method made by the commission and approved by the legislature to be controlling. . . . We find no such fetters imposed upon the commission’s discretion. The policy decision as to the mode of annexation is an exercise of lawfully vested administrative discretion which we

will review only to determine if administrative, legislative or constitutional mandates were disobeyed or if the action constituted an abuse of discretion.

Port Valdez Company, Inc. v. City of Valdez, 522 P.2d 1147, 1151 (Alaska 1974) (footnote omitted).

The Commission hereby acknowledges that such powers and duties carry with them the responsibility to act in a judicious fashion. (Eff. 5/19/89)

Section 3. The powers and duties of the Commission include considering any proposed local government boundary change. As set out by statute such changes are

- (a) proposals for the incorporation of cities and boroughs;
- (b) proposals for the annexation of territory to cities and boroughs;
- (c) proposals for the detachment of territory from cities and boroughs;
- (d) proposals for the dissolution of cities and boroughs;
- (e) proposals for the consolidation of cities and boroughs;

¹*Mobil Oil Corp. v. Local Boundary Com'n*, 518 P.2d 92, 98-99 (Alaska 1974) (emphasis added).

(f) proposals for the merger of cities and boroughs; and

(g) proposals for the reclassification of cities.

Other powers and duties of the Commission include

(h) making studies of local government boundary problems;

(i) adopting regulations establishing standards and procedures for all types of boundary changes; and

(j) considering local government boundary changes or related issues requested of it by the Legislature, the Commissioner of Commerce, Community, and Economic Development, or a political subdivision of the State.² (Eff. 5/19/89; am __/__/__)

Section 4. To facilitate the business of the Commission, each Commission member will notify Staff at least once a week as to changes to the member's schedule. (Eff. __/__/__)

²The Alaska Supreme Court has stated that the duties set out in (h - (j) are mandatory. (*United States Smelt. R. & M. Co. v. Local Bound. Com'n*, 489 P.2d 140 (Alaska 1971). However, a 2005 amendment to AS 44.33.-812(a)(3) made consideration of a request for borough incorporation by one of the listed entities discretionary rather than mandatory. See April 5, 2005, legal opinion from Tamara Brandt Cook, Director, Division of Legal Services, Legislative Affairs Agency. Also see the uncodified laws of the State of Alaska, which were amended in 2005 to add the following: "LEGISLATIVE INTENT. It is the intent of the legislature that nothing in this Act is intended to conflict with the constitutional authority of the Local Boundary Commission to consider any proposed local government boundary change, including borough incorporation."

ARTICLE III - AUTONOMY AND LEGAL REVIEW

The Commission is an autonomous body. For administrative purposes only, it is located within the Department of Commerce, Community, and Economic Development (Department). The Department serves as Staff to the Commission under AS 44.33.020(4) and provides administrative and technical support to the Commission. However, the Commission is legally independent of the Department and all other State agencies.

Despite its autonomy, the Commission recognizes that its final decisions are appealable to the courts under the Administrative Procedure Act at AS 44.62.560 - 44.62.570. Moreover, boundary changes approved by the Commission and certain of its adopted regulations are subject to review and preclearance by the U.S. Department of Justice under provisions of the federal Voting Rights Act of 1965, 42 U.S.C. Section 1973; 28 C.F.R. Part 51. (Eff. 5/19/89; am __/__/__)

ARTICLE IV - MEMBERSHIP AND TERMS OF OFFICE

Section 1. Commission Composition. The Commission consists of five individuals appointed by the Governor. One member is appointed from each of the four judicial districts in the state; the fifth member is appointed from the state at-large. (Eff. 5/19/89)

Section 2. Term of Office:

- (a) Commission members serve staggered terms of five years.

(b) A vacancy occurring in the membership of the Commission is filled by appointment by the Governor for the unexpired portion of the vacated term.

(c) A member whose term has expired remains on the Commission until a successor is appointed by the Governor.

(d) The Commission may, by a vote of three or more members, recommend to the Governor the removal of a member for cause, provided that notice shall be given to the member proposed for removal at least 10 days prior to the meeting at which the vote is to be considered. (Eff. 5/19/89; am __/__/__)

ARTICLE V - OFFICERS, DUTIES, AND DELEGATION

Section 1. Officers consist of a Chairman and a Vice Chairman. (Eff. 5/19/89)

Section 2. By statute, the member appointed from the state at large is the Chairman. The Vice Chairman is elected by a majority of the Commission members for a term of three years. (Eff. 5/19/89)

Section 3. The duties of the officers are as follows:

(a) Chairman or Chair

- (i) Call all meetings and hearings (except that three members of the Commission may also call a meeting or hearing). Preside at all meetings and hearings.
- (ii) Appoint special committees and chairpersons of special committees.
- (iii) Serve as ex-officio member of all committees.
- (iv) Serve as the Commission's official representative.
- (v) Operate and conduct the business and affairs of the Commission according to the orders and resolutions of the Commission.
- (vi) Maintain order and decorum at meetings and hearings. Shouting; profanity; personal attacks against Commission members, Staff, parties, commentators, or others; gratuitous; or defamatory remarks should be stopped. If a meeting or hearing becomes heated, the Chairman should intervene or, if necessary, call a recess.
- (vii) Perform other duties described in these bylaws or assigned by resolution of the Commission. (Eff. __/__/__)

(b) Vice Chairman or Vice Chair

- (i) Assist the Chairman in the discharge of his/her duties.

(ii) Assume the duties of the Chairman in the absence or unavailability of the Chairman.

(iii) Act as the parliamentarian for the Commission.

(iv) Perform other duties in accordance with the orders and resolutions of the Commission.

(Eff. __/__/__)

Section 4. Delegation of powers. In case of the absence of the Chairman or Vice-Chairman, the remaining members may delegate the powers or duties of the Chair or Vice-Chairman to any member in order to effect the business of the Commission. (Eff. __/__/__)

ARTICLE VI - HEARINGS AND MEETINGS

The rules for Commission hearings and meetings are set out in the Commission's regulations at 3 AAC 110.560, 3 AAC 110.570, 3 AAC 110.815, and 3 AAC 110.820. To ensure fairness and impartiality, Commission members shall refrain from making gratuitous and unnecessary statements about a pending case, evidence, or participants in a proceeding,

The Commission has elected to conduct its decisional sessions under 3 AAC 110.570 in public unless it determines otherwise under AS 44.62.310(d)(1). However, the Commission also

recognizes the application of the following legal principles with regard to its decision making process:

- (1) legal advice from the Attorney Generals' office, or from a lawfully approved contractual legal consultant, is confidential under the attorney-client privilege;
- (2) a draft statement of decision is confidential under the deliberative process privilege³ until the time of the draft's consideration at a public meeting; and
- (3) the thought processes or impressions of Commission members in making decisions are confidential under the deliberative process privilege; i.e., a Commissioner cannot be questioned as to his or her thought processes and impressions in reaching a decision.⁴

³The deliberative process privilege "is a widely recognized confidentiality privilege asserted by executive officials. It rests on the ground that public disclosure would deter the open exchange of opinions and recommendations between government officials . . . [and] is intended to protect the executive decision-making process, its consultative functions, and the quality of its decisions. . . . This court has never explicitly adopted the deliberative process privilege by that name. We have however, accepted the "executive privilege" articulated in *United States v. Nixon*, 418 U.S. 683, . . . which encompasses the same policy concerns." (*Capital Information Group v. State*, 923 P.2d 29, 33 (Alaska 1996) (footnotes omitted)).

⁴The Alaska courts include this in the deliberative process privilege.

We stated in *Capital Information Group v. State, Office of the Governor* that we considered the terms "executive privilege" and "deliberative process privilege" to be synonymous for purposes of that discussion. But the two terms are not identical. Instead, the deliberative process privilege is a "branch" of a broader group of governmental privileges. **The roots of the deliberative process privilege lie in the common law; it protects the mental processes of government decisionmakers from interference, not constitutional notions of separation of powers. Therefore, the question is not whether the communication relates to a duty mandated in . . . the Alaska Constitution, but whether disclosure of the communication sought would affect the quality of governmental decisionmaking.**

The Commission recognizes that the application of these privileges is reviewable by the Courts.

(Eff. __/__/__)

ARTICLE VII - TELECONFERENCE POLICY

The Commission's policy and procedures on teleconference is set out at 3 AAC 110.820. That policy provides that persons or parties accessing a Commission hearing or meeting by teleconference must pay for their teleconference calls unless otherwise ordered by the Commission. For persons or parties who access the teleconference from a State Legislative Information Office, the Commission will bear the cost of the teleconference call as long as the hearing or meeting involves a matter of particular importance to the area in which the LIO is located; e.g., a regulations proceeding or a boundary change proposed in that vicinity. The Commission will not bear the expense of such LIO attendance if the matters on the agenda deal with issues of a general nature such as training or orientation of new Commissioners; discussions regarding annual reports or bylaws; boundary change proceedings in an area or territory not affecting that LIO location. A diskette of such a generic proceeding will be available free of charge to a person who is interested but does not wish to pay for attendance by teleconference. Request for such a diskette should be made to Staff. (Eff. __/__/__)

ARTICLE VIII - COMMITTEES

The Commission Chairman may designate ad hoc committees or task forces to accomplish special purposes. Persons other than Commission members may serve on the Commis-

Gwich'in Steering Committee v. State, Office of the Governor, 10 P.3d 572, 578-9 (Alaska 2000) (emphasis added);

sion's ad hoc committees and task forces. Pursuant to advice from the Department of Law, the requirements of the Open Meetings Act do not apply to committees on which two or fewer Commissioners participate. (Eff. 5/19/89; am __/__/__)

ARTICLE IX - RULES OF ORDER

Section 1. Unless otherwise provided by law or these Bylaws, the Commission's procedures for its meetings and hearings are governed by Robert's Rules of Order, (Newly Revised, 10th edition). (Eff. 5/19/89; am __/__/__)

Section 2. The purpose of parliamentary rules is to assist the LBC in transacting business. Whenever the rules fail to serve this purpose, and are not required by law, they may be suspended expressly or by contrary action. A failure by the LBC to conform to procedural rules does not invalidate its official actions. Departures from parliamentary rules do not form the basis for a dispute that is subject to jurisdiction of the courts. If, however, the rules affect procedural requirements under 3 AAC 110.400 - 3 AAC 110.650, relaxation or suspension is governed by the requirements of 3 AAC 110.985. (Eff. 5/19/89; am __/__/__)

Section 3. The rules of order dealing with the process for reconsideration of votes at a meeting are separate and distinct from the rules (regulations) that apply to the process for reconsideration of a Commission decision under 3 AAC 110.570 and 3 AAC 110.580. (Eff. __/__/__)

footnotes omitted).

ARTICLE X - ETHICS; FINANCIAL DISCLOSURE; EX PARTE CONTACT

Section 1. Commission members are required to comply with AS 39.52.010 - 39.52.960, the Alaska Executive Branch Ethics Act and 9 AAC 52.010 - 9 AAC 52.990, the Executive Branch Code of Ethics. The Commission adopts the general goals advanced by the Executive Branch Ethics Act, which are 1) to discourage public officials from acting upon personal or financial interests in the performance of their public responsibilities; 2) to improve the standards of public service; and 3) to promote and strengthen the faith and confidence of the people of this state in their public officers. As provided by AS 39.52.960(8), the Chairman is the designated supervisor for the Commission members. (Eff. 5/19/89; am __/__/__)

Section 2. In addition to the ethics standards established by the Executive Branch Ethics Act and the Executive Branch Code of Ethics, the regulations adopted at 3 AAC 110.800 apply to members of the Commission. (Eff. __/__/__)

Section 3. Commission members are also subject to the ex parte prohibitions in 3 AAC 110.500. (Eff. 5/19/89; am __/__/__) [**Editor's note:** supplemental ethics standards were first established by resolution of the Commission on May 24, 1988. In Register ____, ____2007, the substance of the former provisions of this Article was adopted as a regulation at 3 AAC 110.800.]

Section 4. Each member of the Commission recognizes the requirements for, and importance of, timely filing an annual financial statement with the Alaska Public Offices Commission under AS 39.50.010 - 39.50.200 and 2 AAC 50.010 - 2 AAC 50.200, 2 AAC 50.450 - 2 AAC 50.470, and 2 AAC 50.905 - 2 AAC 50.920 and that statements must be filed by March 15 for the previous calendar year. Each member also recognizes that failure to timely file the required financial statement is a misdemeanor and will subject a member to removal from office under AS 39.-50.080. (Eff. __/__/__)

ARTICLE XI - PUBLIC RECORDS AND ELECTRONIC MAIL

Each member of the Commission recognizes the application of the public records laws to documents created by or filed with the Commission and the Department. Included in the definition of *record* under AS 40.21.150(6) are electronic records, such as electronic mail (e-mail). To avoid concerns or allegations that e-mail is used among members to circumvent public meeting laws, members should avoid sending e-mail to each other on any matter except for scheduling issues. E-mail on all other matters, such as comments on issues, draft decisions, or draft regulations, should be sent to Staff for compilation in a single document for presentation to the Commission as a whole at a public meeting or hearing. (Eff. __/__/__)

ARTICLE XII - DECISIONS, MINORITY OPINIONS, ERRATA

Section 1. Draft decisions. Any Commission member may volunteer to author all or a portion of a written decision required under 3 AAC 110.570(f). In the absence of such an election, the draft decision will be written by Staff in coordination with the Chairman. Each draft

decision must include an analysis of the boundary change standards applicable to the case and how the petition met or failed to meet each standard. The draft must also include a brief summary of the petition and the proceedings. Until considered by the Commission at a public meeting, draft decisions are confidential under the deliberative process privilege.

A draft decision may be distributed to Commission members only by Staff, whether authored by a member or Staff. It will be distributed to each member within fifteen calendar days after the Commission's decisional meeting under 3 AAC 110.570(a)-(d), unless circumstances require a brief extension by the Chair of that timeline or a relaxation of procedures under 3 AAC 110.985. The Commission will meet to discuss the draft decision within eight days after it has been disseminated by Staff. Unless the Commission determines otherwise under AS 44.62.310(d), the draft will be considered in public meeting rather than in executive session.

At the meeting, each Commission member must be prepared to present any suggested changes to the draft. A member should, whenever possible, submit his or her proposed amendments to Staff for copying and distribution to the other members in advance of the meeting.

If there are no substantive changes and no dissenting or concurring opinions to the consider, the draft decision will proceed to final processing by Staff and the Chair so that the decision is timely issued in accordance with 3 AAC 110.570(f). (Eff. __/__/__)

Section 2. Minority Opinions.

(a) **Dissenting Opinion.** When a member of the Commission disagrees with the outcome of a proceeding, he or she may offer a dissenting opinion. If the dissent is short, it may be included at the end of the statement of decision. Otherwise, the member should submit a written dissenting opinion. The dissenting opinion is subject to review, but not modification, by the other Commission members. The dissenting member should express his or her intent to dissent at the decisional meeting held under 3 AAC 110.570. The dissent may be authored by the dissenting member, or he or she may request assistance from Staff in that effort. The draft dissent should be available for dissemination at least two days before the date set for the Commission's public meeting on the relevant draft statement of decision. The draft may be disseminated only in accordance with the rules for disseminating the draft decision. The draft dissent may be discussed at the public meeting at which the relevant statement of decision is considered. If practicable, a dissent to a statement of decision should be issued with that decision.

(b) **Concurring Opinion.** When a member of the Commission agrees with the outcome of a proceeding, but disagrees with the majority's reasoning or wishes to present a different point of view, he or she may offer a concurring opinion. If the statement is short, it may be included at the end of the statement of decision. Otherwise, the member should submit a written concurring opinion, which

is subject to review, but not modification, by the other Commission members.

The concurring member should express his or her intent to concur at the decisional meeting held under 3 AAC 110.570. The concurring opinion may be authored by the concurring member, or he or she may request assistance from Staff in that effort. The draft concurrence should be available at the time of the Commission's public meeting on the relevant draft statement of decision. The draft may be disseminated only in accordance with the rules for disseminating the draft decision. The draft concurrence may be considered at the public meeting at which the relevant statement of decision is considered. To the extent practicable, a concurring opinion to a statement of decision should be issued with that decision.

In the event that discussion of the draft statement of decision or a dissenting or concurring opinion requires additional time for consideration, the Commission may, under the provisions of 3 AAC 110.985, extend the deadline for the filing of the Commission's written statement. In the event that the Chair or Vice Chair is the dissenting or concurring members, the other Commission members may extend the deadline. (Eff. __/__/__)

Section 3. Errata The Commission may at any time correct a clerical or typographical error, an error of calculation or other similar error, or a factual error in its decision, which is not substantive and which would not alter the decision of the Commission, without prior notice to the parties. The Staff, with concurrence of the Chair, may correct a clerical or typographical error without prior notice to the parties. A correction is made by issuance of an errata notice. (Eff. __/__/__)

ARTICLE XIII - STAFF FOR THE COMMISSION

The Department of Commerce, Community, and Economic Development serves as staff for the Commission under AS 44.33.020(4). Staff's role and authority are set out in 3 AAC 110.700 - 3 AAC 110.720. The drafts of Staff's recommendations, including reports issued under 3 AAC 110.530, and decisions are subject to the executive privilege until they are published or considered at a public meeting. The deliberative process privilege, as discussed *supra*, also applies to the thought processes and impressions of Staff. (Eff. __/__/__)

ARTICLE XIV - AMENDMENT OF BYLAWS

These bylaws may be amended at any meeting of the Commission by adoption of a motion or approval of the amendment by three or more Commission members. These Bylaws may be relaxed or suspended by the Chair or by a majority vote of Commission members. (Eff. 5/19/89; am __/__/__)